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17 UNITED STATES DISTRICT COURT  
18 NORTHERN DISTRICT OF CALIFORNIA  
19 SAN JOSE DIVISION

20 MICROSOFT CORPORATION,

21 Plaintiff

22 v.

23 TIVO INC.,

24 Defendant.

Case No. 5:10-cv-00240-RS

JOINT STIPULATION FOR  
A MODIFICATION OF THE  
COURT'S CASE MANAGEMENT  
SCHEDULING ORDER

1 I. INTRODUCTION

2 Pursuant to Civil Local Rules 6-1, 6-2, and 7-12, the undersigned counsel hereby jointly  
 3 request an order changing time that would affect the dates of certain claim construction events set  
 4 forth in the Court's Case Management Scheduling Order. In addition, pursuant to Civil Local Rule  
 5 7-12, the undersigned counsel jointly request a modification of certain discovery limitations set  
 6 forth in the Court's Case Management Scheduling Order.  
 7

8 II. CLAIM CONSTRUCTION SCHEDULING

9 A. Reasons for the Requested Enlargement

10 Pursuant to Civil Local Rule 6-2(a)(1), the reasons for the requested enlargement of time  
 11 are as follows.

- 12 • This case presently involves two patents asserted by Microsoft against TiVo. Dkt.  
 13 No. 1.
- 14 • On May 27, 2010, Microsoft served TiVo with its asserted claims and infringement  
 15 contentions for the original two patents as specified in the Case Management  
 16 Scheduling Order. Dkt No. 23.
- 17 • On May 31, 2010, Microsoft filed a motion to amend seeking to assert five  
 18 additional patents against TiVo. Dkt. No. 27. One week later, on June 7, 2010,  
 19 Microsoft served TiVo with its asserted claims and infringement contentions for the  
 20 five additional patents.  
 21
- 22 • TiVo filed a statement of non-opposition in which TiVo offered not to oppose  
 23 Microsoft's motion to amend so long as appropriate adjustments were made to the  
 24 existing Case Management Scheduling Order. Dkt. No. 32.  
 25  
 26  
 27  
 28

- 1           • The parties agreed, in principle, to extend the current claim construction deadlines  
2           by approximately three months, if the Court were to grant Microsoft's motion to  
3           amend. Dkt. No. 32.
- 4           • Under the parties' proposed schedule, TiVo would have slightly over five months  
5           from when TiVo received notice of Microsoft's five additional patents (i.e., when  
6           Microsoft filed its motion to amend) in which to serve TiVo's invalidity  
7           contentions, which is approximately the same amount of time that TiVo would  
8           have to prepare invalidity contentions had Microsoft filed a separate case. (In *SAP*  
9           *Aktiengesellschaft v. I2 Technologies, Inc.*, 250 F.R.D. 472, 475 (N.D. Cal. 2008),  
10          the court (1) granted plaintiff's opposed motion to amend to add a new patent to the  
11          case and (2) gave the defendant 189 days from the date of the plaintiff's motion to  
12          amend in which to serve the defendant's invalidity contentions.)
- 13          • The parties have thus reached agreement regarding both Microsoft's motion to  
14          amend and TiVo's request to modify the claim construction schedule.

15          For the foregoing reasons, the parties' jointly requested enlargement of time is reasonable.

16          B.     Previous Time Modifications

17          Pursuant to Civil Local Rule 6-2(a)(2), the parties disclose that the only previous time  
18          modification in this case was a joint stipulation giving TiVo a thirty-day extension of time to  
19          answer, plead, or otherwise respond to Microsoft's complaint.

20          C.     Effect the Requested Modification Would Have on the Schedule

21          Pursuant to Civil Local Rule 6-2(a)(3), the parties submit the following proposal for a  
22          modified claim construction schedule. The proposal describes the effect that the requested  
23          modification would have on the current claim construction schedule:

<u>Claim Construction Event</u>	<u>Current Date</u>	<u>Proposed Date</u>
Invalidity Contentions	July 26, 2010	November 4, 2010
Exchange Proposed Terms for Construction	August 9, 2010	November 18, 2010
Exchange Preliminary Claim Constructions and Extrinsic Evidence	August 30, 2010	December 9, 2011
Joint Claim Construction and Expert Reports	September 24, 2010	January 6, 2011
Motion to Amend the Pleadings	October 1, 2010	January 13, 2011
Completion of Claim Construction Discovery	October 22, 2010	February 3, 2011
Opening Claim Construction Brief	November 8, 2010	February 17, 2011
Responsive Claim Construction Brief	November 22, 2010	March 3, 2011
Reply Claim Construction Brief	December 1, 2010	March 10, 2011
Tutorial	January 26, 2011	1 week before Claim Construction Hearing
Claim Construction Hearing	February 2, 2011	Early May 2011
Further Case Management Conference	March 3, 2011	1 month after Claim Construction Hearing

### III. DISCOVERY LIMITATIONS

The Court ordered the following relevant discovery limitations in the Case Management Scheduling Order:

- (a) fifteen (15) non-expert depositions per party, including depositions contemplated by Fed. R. Civ. P. 30(b)(6);

(d) fifty requests for admission per party (exclusive of requests for admission seeking document identification).

If the Court were to grant Microsoft's motion to amend, the parties would agree to a proposed modification of these discovery limitations as follows:

(a)(1) twenty-three (23) non-expert depositions per party, including depositions contemplated by Fed. R. Civ. P. 30(b)(6), with both parties having the right to seek leave of court for additional depositions if necessary;

(a)(2) Joseph H. Matthews, III (one of the inventor-witnesses named on four different patents) may be deposed for up to ten (10) hours;

(d) seventy requests for admission per party (exclusive of requests for admission seeking document identification).

The proposed discovery limitations are reasonable and appropriate given that, if Microsoft's motion to amend were granted, the number of patents in this case would increase from two to seven patents and the number of possible inventor-witnesses would increase from five to thirteen possible inventor-witnesses.

#### IV. STIPULATION

THE PARTIES HEREBY STIPULATE, by and through their respective counsel, and respectfully request that the Court modify the Court's Case Management Scheduling Order as follows:

##### 1. CLAIM CONSTRUCTION SCHEDULING

<u>Claim Construction Event</u>	<u>New Date</u>
Invalidity Contentions	November 4, 2010
Exchange Proposed Terms for Construction	November 18, 2010

Exchange Preliminary Claim Constructions and Extrinsic Evidence	December 9, 2011
Joint Claim Construction and Expert Reports	January 6, 2011
Motion to Amend the Pleadings	January 13, 2011
Completion of Claim Construction Discovery	February 3, 2011
Opening Claim Construction Brief	February 17, 2011
Responsive Claim Construction Brief	March 3, 2011
Reply Claim Construction Brief	March 10, 2011
Tutorial	1 week before Claim Construction Hearing May 11, 2011 at 10:00 a.m.
Claim Construction Hearing	Early May 2011 May 18, 2011 at 10:00 a.m.
Further Case Management Conference	1 month after Claim Construction Hearing June 23, 2011 at 10:00 a.m.

## 2. DISCOVERY

Discovery limitations shall be modified as follows:

- (a)(1) twenty-three (23) non-expert depositions per party, including depositions contemplated by Fed. R. Civ. P. 30(b)(6), with both parties having the right to seek leave of court for additional depositions if necessary;
- (a)(2) Joseph H. Matthews, III (one of the inventor-witnesses named on four different patents) may be deposed for up to ten (10) hours;
- (d) seventy requests for admission per party (exclusive of requests for admission seeking document identification).

All other discovery limitations shall remain the same.

1  
2 Dated: June 24, 2010

3 IRELL & MANELLA LLP  
4 Attorneys for Defendant  
TiVo Inc.


5 By: /s/ Samuel K. Lu  
6 Samuel K. Lu

7 PERKINS COIE LLP  
8 Attorneys for Plaintiff  
Microsoft Corporation

9 By: /s/ Lauren Sliger  
Lauren Sliger

10  
11 PURSUANT TO STIPULATION, IT IS SO ORDERED

12 Date: 6/25/10

13   
14 Hon. Richard Seeborg  
United States District Judge